

Message Text

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PAGE 01 STATE 201864
ORIGIN L-03

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E.O. 11652: N/A

TAGS: MARR, NATO

SUBJECT: NETHERLANDS WATER POLLUTION TAXES

REF: (A) USNATO 07028 (B) AC/304-WP-1, JULY 6, 1977

1. WE APPRECIATE COMPENDIUM BY AD HOC COMMITTEE
OF PREPARATORY WORK ON STATUS OF FORCES AGREEMENT
CONTAINED REF B, WHICH IS MOST COMPREHENSIVE LIST WE
HAVE SEEN. COMMITTEE MAY WISH TO CONSIDER ADDING
MS-R(52)8, PARAS 9-10; AND C-M(52)56, PARA 4, WHICH
CONCERN ARTICLE 8 OF THE MILITARY HEADQUARTERS
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PAGE 02 STATE 201864

PROTOCOL.

2. WHILE THE INTERAGENCY COMMITTEE ON FOREIGN TAX
RELIEF HAS NOT COMPLETED ITS BROADER ANALYSIS OF
THE QUESTION OF EXEMPTIONS AVAILABLE UNDER THE VARIOUS
TAX RELIEF AGREEMENTS (INCLUDING NATO/SOFA AND BILATERAL
AGREEMENTS WITH THE NETHERLANDS), IT IS THE

PRELIMINARY VIEW THAT WATER POLLUTION TAXES WOULD QUALIFY FOR EXEMPTION UNDER ARTICLE X OF THE NATO/SOFA. IT WOULD APPEAR THAT A LOGICAL ARGUMENT COULD BE MADE THAT SUCH TAX IS NECESSARILY BASED UPON RESIDENCE IN THE NETHERLANDS AND ARTICLE X WOULD

SEEM TO EXEMPT SUCH PAYMENT UNDER THE "RESIDENCE FICTION" ESTABLISHED UNDER PARAGRAPH 1 OF THAT ARTICLE. MOREOVER, THERE IS A SPECIFIC EXEMPTION FROM TAXATION IN THE RECEIVING STATE ON "EMOLUMENTS PAID TO MEMBERS OF THE FORCES" BY THE SENDING STATE. SHOULD THIS TAX BE LEVIED ON THE LEASES MAINTAINED BY THE FORCES FOR HOUSING OF MEMBERS OF THE FORCE, THIS WOULD CONSTITUTE AN AMOLUMENT AND EXEMPTED BY ARTICLE X.

3. THE BILATERAL TAX RELIEF AGREEMENT (TIAS 2563) OF MARCH 7, 1952 PROVIDES A BROAD TAX RELIEF FOR "ALL UNITED STATES EXPENDITURES IN THE NETHERLANDS FOR EQUIPMENT, MATERIALS, FACILITIES AND SERVICES FOR THE COMMON DEFENSE EFFORT." FURTHER, SUCH EQUIPMENT, MATERIALS, FACILITIES AND SERVICES PURCHASED IN THE NETHERLANDS ARE DETERMINED UNDER THE AGREEMENT WHEN THEY ARE FOR USE BY MEMBERS OF THE FORCE. THE DEPARTMENT CONTENDS THAT THESE EXEMPTIONS ARE PROPERLY EXTENDED TO FACILITIES USED FOR RESIDENTIAL PURPOSES BY MEMBERS OF THE FORCES AS AN INCIDENCE TO THEIR BEING STATIONED IN THE NETHERLANDS FOR COMMON DEFENSE AND UNCLASSIFIED

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PAGE 03 STATE 201864

NATO PURPOSES. IT SHOULD ALSO BE RECOGNIZED THAT THE ULTIMATE BURDEN OF SUCH TAXES WOULD BE UPON THE UNITED STATES GOVERNMENT AND THAT WOULD, OF COURSE, BE A PRIMARY CONSIDERATION IN GRANTING TAX RELIEF.

4. A MORE DETAILED AND FORMAL POSITION WILL BE DEVELOPED FOR THE SEPTEMBER MEETING AND COORDINATED WITHIN THE INTERAGENCY COMMITTEE.

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